

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AERIELLE TECHNOLOGIES, INC.
and AERIELLE, INC.
Plaintiffs,

v.

MACALLY PERIPHERALS, INC.,
and MACE GROUP, INC. d/b/a
MACALLY U.S.A.
Defendants.

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**CASE NO. 2:08-CV-415
JURY**

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Aerielle Technologies, Inc. and Aerielle, Inc., and files this their Original Complaint against the above-captioned defendants and in support thereof would respectfully show the Court as follows:

I. PARTIES

1. Plaintiffs Aerielle Technologies, Inc. and Aerielle, Inc. (collectively "Aerielle" or "Plaintiffs") are corporations organized under the laws of the state of California, with their principal place of business at 190 S. Whisman Road, Bldg. B, Mountain View, CA 94041. Aerielle, is a consumer electronics designer whose products include wireless accessories for portable mobile audio devices such as I-Pod, MP3/4 players, and related products.

2. Defendants MACALLY PERIPHERALS, INC. and MACE GROUP, INC. d/b/a MACALLY U.S.A. (collectively "MACALLY") are corporations organized and existing under the laws of California with their principal place of business at 4601 E. Airport Drive, Ontario, California, 91761. MACALLY may be served with a summons and a copy of this complaint by serving its registered

agent, Kee Pyng Chen, at 255 W. Wistaria Ave., Arcadia, CA 91007.

II. JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, et seq.

4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§1331 and 1338(a).

5. This Court has personal jurisdiction over MACALLY because, among other things, MACALLY regularly does business in this judicial district and because MACALLY has established minimum contacts with the forum and the exercise of jurisdiction over MACALLY will not offend traditional notions of fair play and substantial justice. On information and belief, MACALLY places infringing products into the stream of commerce with the reasonable expectation and/or knowledge that the actual or potential ultimate purchasers and users are located throughout the United States, including within this judicial district. On information and belief, MACALLY has voluntarily conducted business and solicited customers in the State of Texas, including in this judicial district. On information and belief, MACALLY sells, advertises, markets and distributes infringing products throughout this judicial district. MACALLY has committed and continues to commit acts of patent infringement in this judicial district.

6. Venue is proper in this judicial district under 28 U.S.C. §1391(b), (c) and 1400(b) because MACALLY is subject to personal jurisdiction in the Eastern District of Texas as discussed in the preceding paragraph.

III. THE PATENTS-IN-SUIT

7. MACALLY has infringed and continues to infringe at least two Aerielle patents. United States Patent No. 6,671,494 (“the ‘494 Patent”), entitled “Small, Battery Operated RF Transmitter for Portable Audio Devices for Use with Headphones With RF Receiver,” was duly and legally

issued by the United States Patent and Trademark Office to John James on December 30, 2003. A copy of the '494 Patent is attached hereto as Exhibit A. United States Patent No. 5,771,441 ("the '441 Patent"), entitled "Small, Battery Operated RF Transmitter for Portable Audio Devices for Use With Headphones With RF Receiver," was duly and legally issued by the United States Patent and Trademark Office to John E. Alstatt on June 23, 1998. A copy of the '441 Patent is attached hereto as Exhibit B. The claims of infringement against MACALLY on the '494 Patent and '441 Patent are asserted in the alternative to the extent they conflict.

8. The '441 Patent and the '494 Patent have been assigned to Aerielle who is their current owner with full rights to sue and recover damages and otherwise enforce the '441 Patent and the '494 Patent.

9. The '441 Patent and the '494 Patent are valid and enforceable.

COUNT 1 – INFRINGEMENT OF '494 PATENT

10. MACALLY has infringed, and is still infringing, literally and/or under the doctrine of equivalents, one or more claims of the '494 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the '494 Patent.

11. MACALLY has also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the '494 Patent, in at least this State and District.

12. On information and belief, MACALLY's infringement of one or more claims of the '494 Patent has taken place, with full knowledge of the '494 Patent and has been, and continues to be, willful, deliberate, and intentional.

13. MACALLY's infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the '494 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for MACALLY's infringement, which in no event can be less than a reasonable royalty.

14. MACALLY has caused Aerielle substantial damage and irreparable injury by its infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the '494 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of MACALLY is enjoined by this Court.

COUNT 2 – INFRINGEMENT OF '441 PATENT

15. MACALLY has infringed, and is still infringing, literally and/or under the doctrine of equivalents, one or more claims of the '441 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the '441 Patent.

16. MACALLY has also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the '441 Patent, in at least this State and District.

17. On information and belief, MACALLY's infringement of one or more claims of the '441 Patent has taken place, with full knowledge of the '441 Patent and has been, and continues to be, willful, deliberate, and intentional.

18. MACALLY's infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the '441 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for MACALLY's infringement, which in no event can be less than a reasonable royalty.

19. MACALLY has caused Aerielle substantial damage and irreparable injury by its infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the '441 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of MACALLY is enjoined by this Court.

IV. PRAYER

20. WHEREFORE, Plaintiff Aerielle respectfully requests that:

- A. Defendant MACALLY be summoned to appear and answer;
- B. Plaintiffs be granted judgment against Defendants;
- C. The Court enter a judgment that MACALLY has infringed, contributorily infringed, and/or induced the infringement of the '494 Patent and the '441 Patent, and continues to infringe, contribute to the infringement of, and/or induce the infringement of the '494 Patent and the '441 Patent;
- D. The Court enter a judgment that MACALLY's infringement of the '494 Patent and the '441 Patent was willful and continues to be willful;
- E. The Court enter permanent injunction enjoining MACALLY, its officers, directors, servants, consultants, managers, employees, agents, attorneys, successors, assigns, affiliates, subsidiaries, and all persons in active concert or participation with any of them, from infringement, contributory infringement, and inducement of infringement of the '494 Patent and the '441 Patent, including but not limited to making, using, offering to sell, selling, or importing any products that infringe, literally or under the doctrine of equivalents, the '494 Patent and the '441 Patent;
- F. The Court enter an award to Aerielle of all damages adequate to compensate Aerielle for MACALLY's infringement, contributory infringement, and/or inducement of infringement, such damages to be determined by a jury and, if necessary, an accounting of all damages;
- G. The Court award pre-judgment and post-judgment interest as allowed by law;
- H. The Court enter an award of increased damages in an amount not less than three times the amount of damages awarded to Aerielle for MACALLY's willful infringement of the '494 Patent and the '441 Patent;

- I. The Court enter a declaration that this is an exceptional case under 35 U.S.C. §285 and enter an award of the reasonable attorney's fees, costs, and expenses incurred by Aerielle in this action; and
- J. The Court grant Plaintiffs such further relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

/s/ Michael C. Smith

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